



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 12331963

Date: DEC. 28, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a stage actor, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

After graduating from the [REDACTED] Theatre and Film Institute, the Petitioner has appeared in several [REDACTED] theatrical productions.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met five criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner did not meet any of the evidentiary criteria. On appeal, the Petitioner asserts that she meets all five of the previously claimed criteria, and that the Director imposed arbitrary or unduly restrictive conditions on those criteria.

After reviewing all of the evidence in the record, we conclude that the Petitioner has met at least three criteria, numbered (i), (iii), and (iv). Therefore, rather than discuss the specific requirements of the evidentiary criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

### B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and

that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>1</sup> In this matter, we determine that the Petitioner has not shown her eligibility.

The record shows that the Petitioner has had some degree of success in the [ ] theater community, through which she has satisfied the letter of at least three of the regulatory criteria. The Petitioner, however, has not demonstrated that a successful career in theater in [ ] translates into the *national or international* acclaim that the statute and regulations require.

The Petitioner has won awards from the Association of Latin Entertainment Critics [ ] and the Hispanic Organization of Latin Actors, and she participated, both as an artist and as a judge, at the Festival [ ] described by its founder as "the showcase for Latino Actors in [ ]". The Petitioner has not established that these achievements place her among the small percentage at the very top of her field. Awards, festivals, and theater companies occupy many different levels within the field of live theater, and therefore information about these things carries little weight in the absence of wider context. Eligibility rests upon objective comparison between the Petitioner's accomplishments and those of others in the field, and the Petitioner has not provided sufficient evidence in this regard.

The statute demands national or international acclaim; the regulations require individuals to have risen to the very top of the field of endeavor. The record, as a whole, provides a limited basis for assessing the Petitioner's achievements and recognition in the required national or international context. For instance, the artistic directors of two [ ] theater companies assert that the Petitioner is a critical member of their theater companies. Both companies have mounted award-winning productions, but the record does not provide an adequate basis of comparison to show that the number or prestige of these awards sets them apart from, and above, other theater companies. Likewise, the Petitioner has established local media coverage of the two theater groups, but has not established that the nature or extent of that coverage distinguishes them from other groups.

The Petitioner has established major media coverage in her own right, but this coverage amounts to articles in Mexican newspapers discussing the Petitioner's work in the United States. The Petitioner has shown neither that she was a prominent actress in Mexico, nor that her work in the United States has earned significant coverage in major U.S. media. The articles in the record emphasize that the Petitioner is from Mexico, the implication being that she warrants coverage in Mexico by virtue of being a Mexican who has enjoyed some degree of attention in [ ]. The Petitioner has not shown that, overall, her media coverage has been commensurate with that of top U.S. stage actors.

---

<sup>1</sup> *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

The Petitioner has established a presence in the  theatrical community, but the evidence submitted does not rise to the level of establishing sustained national or international acclaim as an actor at the very top of her field.

### III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that she has earned sustained national or international acclaim, consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). A viable career in a competitive field of endeavor is not commensurate with sustained acclaim.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.